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and after testator's death in the proportion of .8975 to .1025. A dividend was declared after the death of the testator to the total amount of which, the total surplus earned after testator's death bore the proportion of .5132 to .4868. *Held* (1) the intrinsic value of the stock at testator's death must be compared with such intrinsic value at the time the dividend was declared; the comparison must be based on the corporate assets at the two dates, and that the market value of the stock at these two dates is admissible in evidence but is not conclusive thereon. (2) the actual value above par of the stock at the vesting of the trust, by reason of the accumulated surplus fund, belongs to the corpus, and to the extent that such value is impaired by the extraordinary dividend there must be apportionment in favor of the trust fund. Hence .5132 of the dividend per share is income and the remainder capital to be added to the trust fund. *In Re Stokes' Estate* (Pa.), 87 Atl. 971. See NOTES, p. 138.

DIVORCE—ALIMONY—AGREEMENT BETWEEN PARTIES—JURISDICTION.—Pending divorce proceedings, the husband and wife agreed that the husband should pay the wife an annuity for her life, transfer her absolute title to certain personalty and the use of certain realty for her life. This agreement was incorporated in the decree, thus saving the necessity of testimony as to alimony. Upon the subsequent remarriage of the wife, the husband applied for a modification of the decree. *Held*, it is not a decree for alimony and the court can not disturb it. *Emerson v. Emerson* (Md.), 87 Atl. 1033.

In divorce cases the Maryland equity courts are not exercising their general equitable jurisdiction, but are governed by the ecclesiastical law of England, in so far as the same has not been altered by statute. *J. G. v. H. G.*, 33 Md. 401, 3 Am. Rep. 183; *Fisher v. Fisher*, 93 Md. 303, 48 Atl. 833; *Emerson v. Emerson*, *supra*. The rule as to the nature of alimony has not been altered and the court cannot decree to the wife as alimony a gross sum, an absolute title to specific property, or a sale of the husband's estate for her use. 2 BISH. MAR., DIV. & SEP., § 835. The same rule would apply to the creation of an annuity. *Wallingsford v. Wallingsford* (Md.), 6 Har. & J. 485.

Consent cannot confer jurisdiction; and a divorce court limited to the determining of the marital status of the parties, granting alimony, and providing for the custody and maintenance of the children, cannot base its authority to settle the rights of the parties on an agreement between them. *Iglehart v. Armiger* (Md.), 1 Bland 519.

It is also well settled that there can be no material variation between the allegata and probata. A complainant cannot state one case in his pleadings and make a different one in his proofs. *Small v. Owings*, 1 Md. Ch. 363; *Keaton v. McGwier*, 24 Ga. 217; *Semrow v. Semrow*, 23 Minn. 214.

The agreement was in lieu of alimony; could be enforced irrespective of any contingencies; and therefore it seems that the Court, acting as a divorce court, exceeded its restricted jurisdiction in the enforcement of the agreement determining the property rights of the parties.